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The original claims have been replaced by a new set of claims. For the Examiner's convenience, Applicants point out that the new claims correspond to the previous claims as follows:

<u>New Claims</u>	<u>Previous Claims</u>
9	5
10	6
11	7
12	8
13	New; supported by page 8, lines 5-12
14-18	1

Applicants do not believe that the new claims introduce any new matter.

With respect to the limitation added to claim 9 that the dihydrofolic acid and/or tetrahydrofolic acid is in the absence of vitamin B12, Applicants submit that such limitation finds ample support throughout the specification. The instant specification, for example, contains a number of examples of compositions according to the present invention, *none of which contain vitamin B12*. Although these compositions contain folic acid, they are expressly stated to be illustrative of the invention, which includes the corresponding dihydrofolic acid and/or tetrahydrofolic acid preparations. Accordingly, the specification conveys to persons

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skilled in the art, among other things, the concept of cosmetic preparations containing folic acid, dihydrofolic acid and/or tetrahydrofolic acid in the absence of vitamin B12. Consequently, the recitation in the present claims that the preparation does not contain vitamin B12 does not introduce new matter. *See, e.g., In re Anderson*, 176 USPQ 331, 336 (CCPA 1973), for the proposition that in determining whether an amendment to a claim constitutes new matter, the question is not whether the added words are words that are used in the application as filed, but whether the concept embodied by the added words is present in the original specification.

The Examiner suggested that Applicants adopt a certain arrangement of the specification including certain section headings. Applicants point out that 37 CFR §1.77(b) indicates that the specification “should” contain these headings, but not that it “must” contain these headings. Thus, the arrangement suggested by the Examiner is optional, not mandatory, and, in view of recent decisions of the Court of Appeals for the Federal Circuit relying on such headings as limitations, Applicants would prefer not to adopt these headings, but will strongly consider doing so if the Examiner should insist.

Claims 5-8 were rejected under 35 USC §102(e) as being anticipated by Barclay, US 2002/0035087 A1. In response, Applicants would remind the Examiner that anticipation requires that each and every element as set forth in the claim must be found, either expressly or inherently described, in a single prior art reference, and, further, the absence in the prior art reference of even a single one of the claim elements is sufficient to negate anticipation. *In re*

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*Robertson*, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Applicants do not believe that Barclay is prior art since Barclay's filing date is after the instant priority date. However, Applicants point out that an essential feature of all of Barclay's compositions is *the presence of vitamin B12*, which is *not* a constituent of the cosmetic preparations presently claimed. Consequently, Barclay cannot anticipate the present claims.

In view of the foregoing, Applicants respectfully submit that the Examiner would be fully justified to reconsider and withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is earnestly solicited.

Further on this point, Applicants seek the allowance of claims 14-18 as well, even though method claims were previously held to be nonelected. In this regard, Applicants would call the Examiner's attention to the Commissioner's Notice published in the Official Gazette on March 26, 1996, at 1184 OG 86. According to that notice:

"[A]pplicant may be called upon under 35 U.S.C. § 121 to elect claims to either the product or the process. The claims to the non-elected invention will be withdrawn from further consideration. However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from and otherwise includes all the limitations of an allowed product claim."

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Applicants presume that the Examiner will proceed in accordance with this notice, and that, once the cosmetic preparation claims 9-13 are found to be allowable, then the corresponding method claims 14-18 will be rejoined and examined. If not, then Applicants would appreciate an explanation from the Examiner of why this notice is not applicable.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

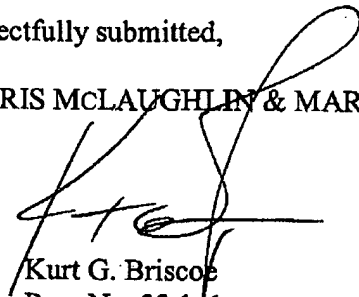
Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

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